No. 81287-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LISA BROWN, Washington State Senator and Majority Leader of the Washington State Senate,

Petitioner,

BRAD OWEN, Lieutenant Governor of the State of Washington,

Respondent.

BRIEF OF AMICI CURIAE VOTERS WANT MORE CHOICES, TIM D. EYMAN, MIKE FAGAN, AND JACK FAGAN

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IDENTITY AND INTEREST OF AMICI

Amici Curiae, Voters Want More Choices, Tim D. Eyman, Mike Fagan, and Jack Fagan were the sponsors of Initiative 960. Among other purposes, Initiative 960 ("I-960") educated voters regarding our State's long-standing statutory supermajority vote requirement for raising taxes. *See* RCW 43.135.035(1).

Amici expended considerable time and effort drafting Initiative 960 and engaging the public in open dialogue regarding its merits. Amici's efforts culminated in the voters' strong approval of I-960 at the General Election held on November 6, 2007. As sponsors of I-960, and longstanding supporters of the supermajority vote requirement, Amici are uniquely positioned to offer their analysis regarding the history and constitutionality of the requirement.

INTRODUCTION

Senator Brown is indeed right about one thing; "[t]here is an elephant in the courthouse." Pet's Reply Br. at 1 n.1. Unlike Senator Brown's perceived pachyderm, however, the real one is this: Why is Senator Brown seeking such extraordinary relief (*i.e.* a writ of mandamus) *against a state officer who agrees with her position*, when the supermajority vote requirement that she challenges can be amended with nothing more than the simple majority vote that she claims is the "bedrock

tenet of our democracy"? *Id.* at 3. The answer is simple. Senator Brown seeks to foist resolution of her purely *political* problem into this Court of *law*. Not only does the Petition fail to properly invoke this Court's original jurisdiction, but it simply cannot survive scrutiny on its merits. Amici respectfully request the Court to dismiss the Petition.

FACTS[1]

The supermajority vote requirement for tax increases has become a fixture in Washington State. Not only have the voters repeatedly expressed their support for the requirement, but the Legislature has reenacted and reaffirmed it through various bipartisan efforts.

In 1993, the voters of Washington State approved Initiative 601 which, among other provisions, required the Legislature to obtain at least a two-thirds legislative majority to pass tax increases. *See* Initiative Measure No. 601 (Laws of 1994, ch. 2, § 4).

In 1998, the Legislature enacted Referendum Bill No. 49 which expressly "reenacted and reaffirmed" Initiative 601, including the supermajority vote requirement. *See* Referendum 49 (Laws of 1998, ch. 321, § 14) (codified at RCW 43.135.080). Referendum 49 was

[1] Pursuant to RAP 10.3(e), Amici have "review[ed] all briefs on file," as well as the Agreed Statement of Facts. Inasmuch as none of the parties have provided a complete legislative history of the supermajority vote requirement, Amici offer the accompanying facts to fill that void.

subsequently approved by the voters that same year.

In 2002, the Legislature enacted Senate Bill 6819 which temporarily suspended the supermajority vote requirement for the 2001-2003 biennium. Notably, SB 6819 re-imposed the supermajority vote requirement at the conclusion of that bienniuim. *See* S.B. 6819, 57th Leg., Reg. Sess. (Laws of 2002, ch. 33, § 1) (codified at RCW 43.135.035). Ironically, Senator Brown was the sponsor of this bill. *Id.*

In 2005, the Legislature enacted Substitute Senate Bill 6078 which again suspended the supermajority vote requirement from April 18, 2005 to June 30, 2007. *See* Substitute S.B. 6078, 59th Leg., Reg. Sess. (Laws of 2005, ch. 72, § 2) (codified at RCW 43.135.035). *Id.* In yet another demonstration of support for the supermajority vote requirement, however, the Legislature enacted Engrossed Substitute Senate Bill 6896, which re-imposed the supermajority vote requirement effective June 30, 2006, a whole year prior to June 30, 2007. *See* Engrossed Substitute S.B. 6896, 59th Leg., Reg. Sess. (Laws of 2006, ch. 56, § 8) (codified at RCW 43.135.035). Ironically, Senator Brown also sponsored this bill. *Id.*

Finally, the voters of Washington State approved Initiative 960 on November 6, 2007. *See* Initiative Measure No. 960 (Laws of 2008, ch. 1). As indicated, the supermajority vote requirement was already in effect on that date as a result of ESSB 6896. I-960 did not reenact the

supermajority vote requirement.[2] Instead, I-960 amended RCW 43.135.035(1) to remedy long-standing and perceived ambiguities regarding whether the supermajority vote requirement applied to all tax increases, or merely those deposited into the General Fund.

In fact, in a challenge to the explanatory statement for I-960, Judge Anne Hirsh, Thurston County Superior Court, ruled that I-960 did not enact a new supermajority vote requirement and corrected the language of the statement accordingly. *See* App. A., Voters' Pamphlet, 2007 General Election, Nov. 6, 2007, at 11 (stating that I-960 would "appl[y] to the *existing* requirement that any action taken by the legislature that 'raises taxes' must be approved by a two-thirds vote.") (emphasis added).

In summary, although the supermajority requirement found its genesis via an initiative, it has been repeatedly readopted and reaffirmed by the Legislature and the voters of Washington State. Amici respectfully request that the Court deny Petitioner's request to order its exodus.

ARGUMENT

A. THE PETITION FAILS TO PROPERLTY INVOKE THIS COURT'S ORIGINAL JURISDICTION

[2] I-960's sponsors clearly communicated this issue to voters during the campaign. *See, e.g.,* Tim Eyman, *I-960 Tells State Policymakers to Stop Violating the Law*, Seattle Times, Oct. 11, 2008 ("I-960 doesn't set the bar higher; it simply holds lawmakers to the laws already on the books... Current law requires two-thirds legislative approval for tax increases.").

Amici generally agree with the Lt. Governor's procedural arguments as far as they go: mandamus is an inappropriate remedy and the declaratory judgment claim is non-justiciable. *See generally* Lt. Gov's Br. at 10-35. However, the Lt. Governor fails to explain some of the more compelling reasons why his arguments are correct.

1. *Walker v. Munro* Controls This Case and Dictates That Senator Brown's Claims Be Rejected As Procedurally Infirm

The Lt. Governor relies heavily on this Court's decision in *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994). However, he fails to adequately emphasize just how completely *Walker* controls this case.

Walker is directly on point here. As in this case, *Walker* was an original action in which petitioners sought a writ of mandamus on the claimed unconstitutionality of portions of chapter 43.135 RCW, including the supermajority vote requirement therein. *Id.* at 405. As in this case, the requested writ in *Walker* aimed to dictate to the Lt. Governor how he was to exercise his powers as presiding officer of the Senate. *Id.* at 410. And, as in this case, the petitioners in *Walker* sought to piggy-back a declaratory judgment claim on their petition for mandamus, despite the facts that (1) the declaratory judgment claim was non-justiciable and (2) this Court lacks original jurisdiction over declaratory judgment actions.

Id. at 411; *see also* CONST. art. IV, § 4. Accordingly, the application of *Walker* to the present dispute should be the beginning and end of this case.

a. Under *Walker*, the Lt. Governor's duties here are not ministerial. Rather, they are discretionary and thus are not subject to mandamus

Senator Brown attempts to distinguish *Walker*, but her arguments are wholly unpersuasive. First, she argues that the Lt. Governor's duties here differ from those described in *Walker* and are not discretionary. This argument fails even the most minimal scrutiny. The *Walker* Court observed that the Speaker of the House and President of the Senate

> have the duties to preside over the Legislature, certainly not an appropriate subject for mandamus, ***and*** to certify and sign bills passed. The signing of a bill is not a ministerial task, as it involves a decision regarding the number of votes required for a particular action and whether those votes have been properly cast.

124 Wn.2d at 410 (emphasis added). Senator Brown conveniently omits the first duty: "presid[ing] over the Legislature" – or, here, the Senate. Instead, she simply mentions the second duty, "to certify and sign bills passed," and claims that the discretionary elements of that duty listed by the Court (determining the number of votes required and the propriety of those votes) are not present here.

Of course, that is simply untrue. This case is all about the Lt. Governor's "decision regarding the number of votes required for a

particular action," *id.* – specifically, the number of votes required to pass SB 6931. Indeed, while Amici agree with the Lt. Governor's ruling that RCW 43.135.035(1) applied to SB 6931, it is certainly not the case that the interpretation and application of a statute to a pending bill (or, here, in response to a point of order) is a mere ministerial task. Rather, this task requires the official's considered judgment and lies at the heart of the Lt. Governor's duties in presiding over the Senate.[3] The exercise of such judgment is a quintessential discretionary act.

There is good authority that mandamus may not be used to compel the performance of acts or duties that involve the discretion of a public official. *See, e.g., Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170-71, L.Ed. 60 (1803); *Walker*, 124 Wn.2d at 410. Given the discretionary nature of the duties here, the Court may not issue a writ of mandamus.

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[3] Senator Brown implicitly concedes that executive and legislative officials may make such discretionary judgments about the constitution. She cites with approval this Court's observation that it "is emphatically the province and duty of the judicial department to say what the law is, ***even when that interpretation . . . is contrary to the view of the constitution taken by another branch***." Pet's Reply Br. at 13-14 (quoting *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 496, 585 P.2d 71 (1978)) (emphasis added). This statement, of course, necessarily implies that the other branches have the power to interpret the constitution in the course of their activities. The *Walker* Court recognized this in refusing to "issue a writ directing officers of the state to adhere to the constitution, as we presume that they already do so ***without our direction***." 124 Wn.2d at 409 (emphasis added).

b. Under *Walker*, the parties' "interests" in this suit are insufficient to render it justiciable.

Senator Brown also claims that her interests and the Lt. Governor's interests in this suit support a finding that her declaratory judgment action is justiciable. Again, *Walker* is to the contrary.

As stated in both parties' briefs and this Court's precedents, four elements must be met to render a declaratory judgment action justiciable:

> For declaratory judgment purposes, a justiciable controversy is:
>
> (1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.
>
> Absent these elements, the court steps into the prohibited area of advisory opinions.

Walker, 124 Wn.2d at 411-12 (citations and quotations omitted).

Here, Senator Brown asserts that because she voted in favor of SB 6931, she has a direct and substantial interest in determining "whether [the bill] 'passed' or 'lost'" sufficient to bring a declaratory judgment action. Pet's Reply Br. at 17. However, the *Walker* Court expressly rejected such "political" harms as insufficient to support a declaratory judgment action. 124 Wn.2d at 412; *see also To-Ro Trade Shows v. Collins*, 144 Wn.2d

403, 411-12, 27 P.3d 1149 (2001) (quoting *DeCano v. State*, 7 Wn.2d 613, 616, 110 P.2d 627 (1941) for the principle that "one may not challenge the constitutionality of a statute unless it appears that he will be ***directly* damaged in person or in property** by its enforcement." (italics in original, bold added)).[4]

Senator Brown's description of the Lt. Governor's interest in this suit is also insufficient to support a declaratory judgment action. She describes this interest as the "defin[ition] of a significant aspect of his legal obligations with respect to the passage of tax bills out of the Senate," Pet's Reply Br. at 17 – *i.e.*, it will provide him with legal advice regarding the effect of RCW 43.135.035(1). This is the very definition of an advisory opinion, a creature that is expressly "prohibited" under Washington law. *See, e.g.*, *To-Ro Trade Shows*, 144 Wn.2d at 416; *Walker*, 124 Wn.2d at 414; *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)).[5]

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[4] Moreover, it is indisputable that SB 6931 "lost," and no action of this Court can change that. Even if the Court decided that RCW 43.135.035(1) was unconstitutional, that would not revive SB 6931. Nor would such a conclusion enact SB 6931 into law, inasmuch as this would require both the approval of the House and the Governor. Indeed, given Senator Brown's stated interest in this suit, it is apparent that her case is moot.

[5] Senator Brown's failure to appeal the Lt. Governor's ruling to the full Senate is also fatal under *Walker* for at least two reasons. First, as stated by the *Walker* Court, when a statute "may be amended by the very persons the Petitioners claim are being harmed, state legislators, we cannot do otherwise than to find that this is only a speculative dispute," and thus non-justiciable. 124 Wn.2d at 412; *see also supra* at 4 (summarizing previous legislative suspensions of supermajority requirement).

Thus, at best, the Lt. Governor is apathetic regarding the Court's decision on the constitutionality of RCW 43.135.035(1).[6] However, as explained below, it is apparent that the Lt. Governor actually *agrees* with Senator Brown that the statute is unconstitutional.

2. The Lieutenant Governor's Agreement With Senator Brown's Substantive Arguments Demonstrates That The Parties Lack Genuinely Adverse Interests.

In addition to lacking "direct and substantial" interests in this case, the text of the Lt. Governor's ruling plainly demonstrates that the parties also lack "genuine and opposing interests." Rather, their interests are identical: the belief that RCW 43.135.035(1) is unconstitutional and the hope that this Court will agree.

The Lt. Governor's ruling in response to Senator Brown's point of order reads in pertinent part:

Second, it is well established that mandamus is unavailable where the petitioner has "any other specific and legal remedy." *Marbury*, 5 U.S. at 169. Here, Senator Brown plainly has such a remedy in the Senate. Moreover, despite Senator Brown's contentions, this Court's decision in *Washington State Legislature v. State*, 139 Wn.2d 129, 985 P.2d 353 (1999), is not to the contrary. In that case, Governor Locke argued that the Legislature did not avail itself of its ability to override his veto and thus could not seek mandamus. *Id.* at 151 (Madsen, J. concurring). While Senator Brown asserts that the Court "held" that this step was not necessary, Pet's Reply Br. at 22, this argument was not even addressed by the majority. Rather, it was only noted by Justice Madsen in her concurrence wherein she warns the Court against becoming "embroiled in political controversies." *Id.* at 152 (Madsen, J. concurring).

[6] Senator Brown also claims that the Attorney General has a direct and substantial interest here in defending the constitutionality of RCW 43.135.035(1), as if that were a sufficient basis to establish the justiciability of this case. *See* Pet's Reply Br. at 17-18. Of course, the Attorney General is not a party to this action, rendering his interests irrelevant to whether this case is justiciable.

> The President begins by addressing the argument raised by Senator Brown as to a possible conflict between the Constitution and I-960 with respect to the number of votes required to pass a measure. The Constitution is the preeminent law of our state, and all other laws and rules applicable to this body are unquestionably subordinate to the Constitution. Nonetheless, the President has taken an oath to uphold all of the laws of our state and nation, including both Constitutional and statutory law. **Whatever the merits of Senator Brown's legal argument—and the President is inclined to agree with her arguments**—it is not for him to decide legal matters. Under our Constitutional framework of separation of powers, the authority for determining a legal conflict between the Constitution and a statute is clearly vested with the courts. It is for this reason that the President has a long-standing tradition of refraining from making legal determinations, and he does so, again, in this case. **Senator Brown's arguments are cogent and persuasive, but the proper venue for these legal arguments is in the courts, not in a parliamentary body. For these reasons, the President believes he lacks any discretion to make such a ruling,** and he explicitly rejects making any determination as to the Constitutionality of I-960 and instead is compelled to give its provisions the full force and effect he would give any other law.

ASF 20 (emphasis added).

This passage makes a mockery out of Senator Brown's assertion that the parties to this case "emphatically disagree on whether . . . RCW 43.135.035(1) violates Article II, § 22 of our State Constitution." Pet's Reply Br. at 15. Indeed, taken as a whole, the passage reads as if it were drafted by Senator Brown's own lawyers. Not only does it agree with Senator Brown's substantive position, it also attempts to grease the skids

for her procedural arguments. Both the Attorney General in the briefing here and this Court in *Walker* have recognized the discretion reposed in the Lt. Governor as President of the Senate. *See* Lt. Gov's Br. at 15-17; *Walker*, 124 Wn.2d at 410. Yet, in his ruling, the Lt. Governor expressly disavowed this discretion. This is rather convenient from Senator Brown's point of view, inasmuch as she has the burden of establishing that her petition for mandamus is directed at a ministerial, rather than discretionary, duty. The Lt. Governor's ruling also all but invites this Court to reach into the internal legislative processes of the Senate to decide this case in violation of basic separation of powers principles – again quite conveniently from Senator Brown's point of view.

Given the substantial agreement between Senator Brown and the Lt. Governor's ruling, Amici cannot help but wonder whether the Lt. Governor has materially limited the Attorney General's advocacy in support of the constitutionality of RCW 43.135.035(1). In any event, it is plain that the parties lack genuinely adverse interests. The Court should accordingly hold that this case is non-justiciable.

B. RCW 43.135.035(1) DOES NOT VIOLATE THE WASHINGTON CONSTITUTION

As indicated previously, Amici concur with the Lt. Governor that this case fails to properly invoke this Court's original jurisdiction.

However, if this Court reaches the merits of Senator Brown's claim, Amici respectfully suggest that her arguments cannot survive scrutiny.

1. Constitutional Analysis Must Commence With Plain Language

The State correctly observes that oft-repeated principle that "[a]ppropriate constitutional analysis begins with the text and, for most purposes, should end there as well. Lt. Gov's Br. at 37 (citing *Malyon v. Pierce County*, 131 Wn.2d 779, 799, 935 P.2d 1272 (1997)). As indicated, the text necessarily includes the words themselves, their grammatical relationship to one another, as well as their context. *Id.*

Tellingly, of the negligible five pages of Senator Brown's opening brief dedicated to the merits of the petition (see pages 11 through 16), none of them analyze the plain language of Article II, § 22.

> **Passage of Bills:** No bill shall become a law unless...a majority of the members elected to each house be recorded thereon as voting in its favor.

CONST. art. II, § 22. This section does nothing more than establish the unremarkable, yet essential principle that anything less than a majority is not enough to pass a bill (*i.e.* it only describes the circumstances in which a bill does NOT pass). The Lt. Governor's arguments in this regard are persuasive. *See* Lt. Gov's Br. at 37-39. Additionally, it should be noted that a supermajority is simply a type of majority.

2. If the Language of the Constitution Is Ambiguous, Historical Context is Appropriate

Senator Brown's legal theory appears to be that the Framers of our State Constitution drafted Art. II, § 22 with the specific intent to preclude supermajority vote requirements. Unfortunately, Senator Brown (and the Lt. Governor for that matter) leaves a gaping hole in her constitutional exegesis. Specifically, she fails to inform this Court of those specific deliberations from the 1889 Constitutional Convention regarding the adoption of Art. II, § 22 or otherwise provide historical context.

The sole discussion at the 1889 constitutional convention regarding Art. II, §22 appears to have been about whether the phrase "majority vote" should be amended to refer to a majority of those present and voting or a majority of all members of the body. *See* App. B, Robert F. Utter & Hugh D. Spitzer, The Washington State Constitution: A Reference Guide 62 (2002). *See also* App. C, Seattle Times, August 9, 1889, p.1, col 5.

The absence of discussion regarding the propriety of supermajority vote requirement is important and relevant. Specifically, the Lt. Governor's position with respect to Art. II, §22 is very simple: Art II, § 22 does nothing more than state the unremarkable principle that less than a majority is insufficient to transact business. If Art. II, § 22 encompassed the much more complicated position espoused by Senator Brown, one

would expect a debate regarding the subject, especially because supermajority requirements were well known by our Framers in 1889.

Nor does Senator Brown's position comport with the historical context in 1889:

> Washington's citizens feared governmental tyranny, a tyranny they generally identified with the legislative branch. The settlers, who were primarily immigrants from other states, had extensive experience with and knowledge of legislative abuses. In addition, Washington Territory itself experienced legislative abuses. In 1862-63, the legislature reportedly passed no general laws, but enacted more than 150 pieces of special legislation for the benefit of "private interests against the general welfare." The delegates to the Constitutional Convention carried these experiences with them; one delegate remarked that if a stranger were to step into the convention "he would conclude that we were fighting a great enemy and that this enemy is the legislature."

Brian Snure, Comment, *A Frequent Recurrence To Fundamental Principles: Individual Rights, Free Government, And The Washington State Constitution*, 67 Wash. L. Rev. 669, 671 (1992). Moreover, "[t]he constitution manifested a distrust of the legislature and pessimism regarding legislative frugality by requiring special elections before the state could take on indebtedness." *Id.* at 684. In other words, the historical context does not support Senator Brown's position that Art. II, § 22 was intended to make legislating, especially tax increases, a primrose path.

3. Washington Jurisprudence Does Not Support Senator Brown's Claims

This case is not the first time that this very Court has considered whether a statute may require more votes than an alleged floor established by the state constitution. In fact, this Court has already squarely rejected the claim that, where our state Constitution establishes a vote requirement, a statute may not impose a greater requirement.

In *Robb v. Tacoma*, 175 Wash. 580, 28 P.2d 327 (1933), this Court considered the constitutionality of a *statute* that effectively established a higher vote threshold than the following *constitutional* supermajority:

> No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding...without the assent of three-fifths of the voters therein voting at an election to be held for that purpose.

Id. at 584 (quoting CONST. Art. VIII, § 6).

The appellants argued that the following statute was inconsistent with Art. VIII, § 6 because it effectively imposed a higher vote threshold:

> No general obligation bonds of any county, city, town, port district, or metropolitan park district upon which a vote of the people is required under existing laws shall be issued...unless, in addition to all other requirements provided by law in the matter of the issuance of general obligation bonds by such municipality or district, the total vote cast upon such proposition shall exceed fifty per cent of the total number of voters voting in such municipality or district at the general county or state election next preceding such bond election.

Id. at 585 (quoting Rem. Rev. Stat. § 5646-1)

First, the *Robb* Court agreed that the statute could require a higher vote threshold than the Constitution: "[T]the statute contains a provision, the effect of which may require a greater number of votes, in order to create a municipal indebtedness, than is required by the Constitution. *Id.* at 585. However, the Court held there was no constitutional infirmity:

> Article 8, § 6, of the state Constitution imposes a limitation upon the power of the Legislature, in that it may not fix a *less* number than a three-fifths majority of the votes cast, in order to validate a bond election. But the Constitution does not place any other limitation whatever upon the legislative power. *It fixes a minimum limit of restriction below which the Legislature may not go, but it does not fix a maximum limit to which the Legislature may advance on 'an ascending scale.'*

Id. at 587 (emphasis added)

> We are of the opinion that [the statute]...is not out of harmony with, nor repugnant to, article 8, § 6, of the Constitution, and must therefore be held to be valid...

Id. at 593.

The *Robb* court clearly held that the legislature's plenary power extended to establishing more strenuous voting requirements than those established by the Constitution.[7] This binding precedent still applies and demands the same result here.

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[7] As indicated above, the supermajority vote requirement is now a product of the legislature and not the initiative process. *See supra*, at 3-6. However, even if construed

Moreover, Senator Brown urges this Court to follow *Alaskans for Efficient Government, Inc. v. State*, 153 P.3d 296 (Alaska 2007). Pet's Reply Br. at 9. However, "Art. II, Section 22, [was] taken from [the] California and Pennsylvania [constitutions]." *See* App. B, Utter and Spitzer, at 62. Thus rather than following an interpretation of the Alaska Constitution (which post-dates our Washington Constitution by nearly 70 years) this Court should be more persuaded by California precedent as urged by the Lt. Governor. *See* Lt. Gov's Br. at 38-39 (citing *People v. Cortez*, 6 Cal. App. 4th 1202, 8 Cal. Rptr. 2d 580 (Cal. Ct. App. 1992)).

4. Senator Brown's Appeal to Broad-Based Democratic Principles is Unavailing

Finally, evidencing an apparent lack of confidence in her legal arguments, Senator Brown spends the vast majority of her briefing making policy arguments as to why supermajorities are allegedly bad public policy. Of course, the reenactment of the supermajority requirement by the Legislature speaks for itself regarding the desirability of the public policy. In fact, Senator Brown even sponsored legislation that reimposed the requirement. *See supra*, at 4.

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as the latter, "the people's legislative power is coextensive with the legislature's." *See Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318 (2005). *See also Maleng v. King County Corrs. Guild*, 150 Wn.2d 325, 330, 76 P.3d 727 (2003) ("[t]he passage of an initiative measure as a law is the exercise of the same power of sovereignty as that exercised by the Legislature in the passage of a statute").

Senator Brown states that it is the exclusive province of this **Court** to say what the **law** is. Pet's Br. at 2. However, she fails to state the obvious counterpart—crafting **public policy** is the province of the **Legislature**. So when Senator Brown accuses the statutory supermajority of being a "poison," she is doing nothing more than criticizing her colleagues that have "re-enacted and re-affirmed" the requirement. *See* RCW 43.135.080. The Legislature's "poison" can be amended by a simple majority vote.[8]

Finally, Senator Brown continues her policy arguments by claiming that "majority rule has been a bedrock tenant of our democracy since its founding." Pet's Reply Br. at 3. The U.S. Supreme Court has thoroughly rejected any notion that supermajority vote requirements are somehow antithetical to democratic principles:

> **Certainly any departure from strict majority rule gives disproportionate power to the minority. But there is nothing in the language of the Constitution, our history, or our cases that requires that a majority always prevail on every issue...**
>
> **The Federal Constitution itself provides that a simple majority vote is insufficient on some issues... The constitutions of many States prohibit or severely limit the power of the legislature to levy new taxes or to**

[8] Under Art. II, §1(c), an initiative cannot be "amended or repealed within a period of two years following such enactment." Senator Brown implies that the supermajority vote requirement is not currently subject to suspension or repeal because it was allegedly "reenacted with the November 2007 adoption of I-960." Pet's Br. at 6. As indicated above, I-960 did not reenact the supermajority vote requirement. *See supra* at 4-5.

> **create or increase bonded indebtedness, thereby insulating entire areas from majority control.**
>
> Wisely or not, the people of the State of West Virginia have long since resolved to remove from a simple majority vote the choice on certain decisions as to what indebtedness may be incurred and what taxes their children will bear.
> ...
> We see no meaningful distinction between such absolute provisions on debt, changeable only by constitutional amendment, and provisions that legislative decisions on the same issues require more than a majority vote in the legislature. On the contrary, these latter provisions may, in practice, be less burdensome than the amendment process. Moreover, the same considerations apply when the ultimate power, rather than being delegated to the legislature, remains with the people, by way of a referendum.

Gordon v. Lance, 403 U.S. 1, 6-7, 91 S. Ct. 1889, 29 L. Ed. 2d 273 (1971) (emphasis added). In summary, Senator Brown's policy arguments are without merit. *See also Thurston v. Greco,* 78 Wn.2d 424, 474 P.2d 881 (1970) (holding that supermajority vote requirement in state constitution does not violate one-man-one-vote requirement).

CONCLUSION

For the foregoing reasons, Amici urge the Court to deny the Petition.

RESPECTFULLY submitted this 8th day of August, 2008.

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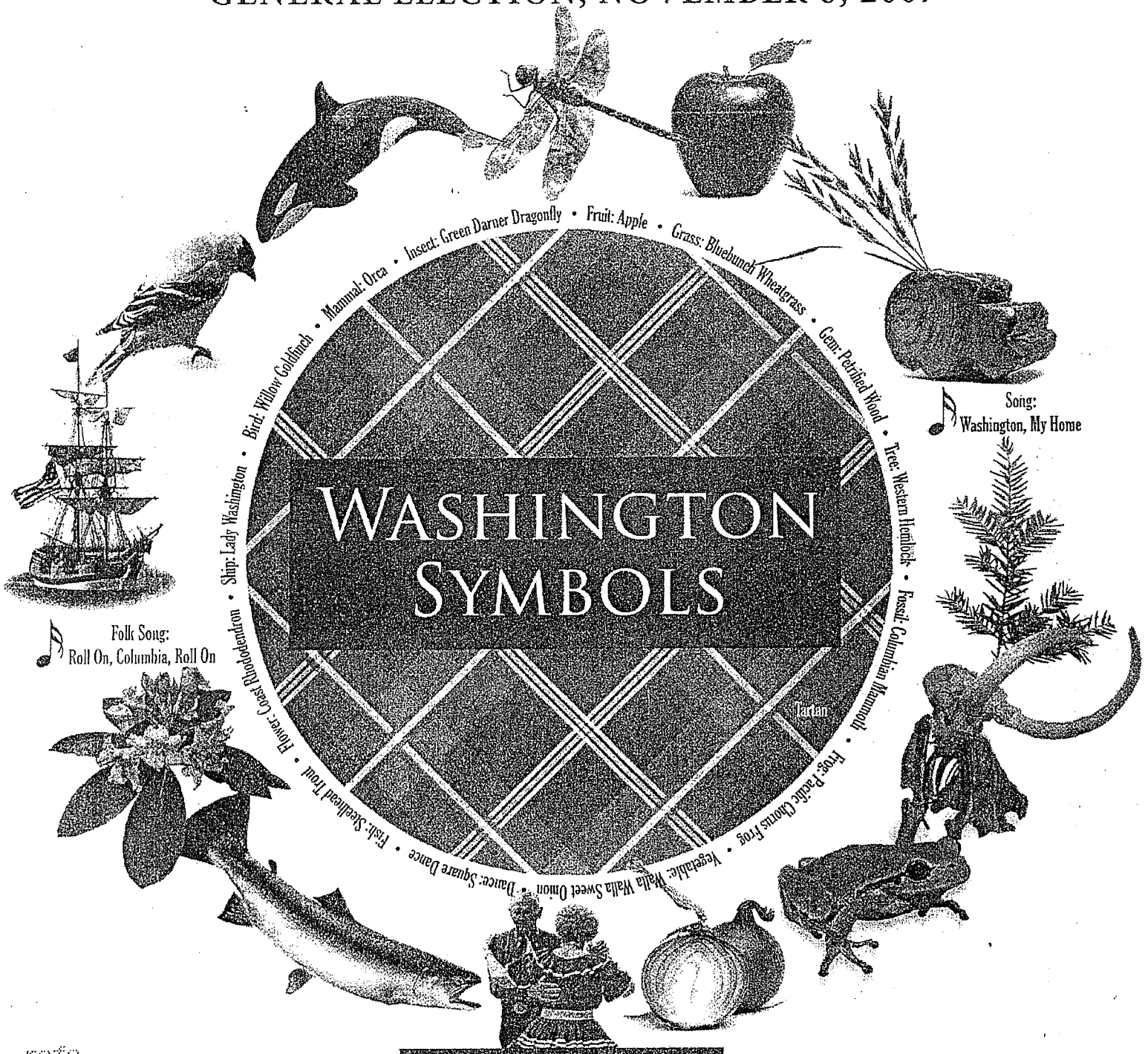
FILED AS ATTACHMENT TO E-MAIL

APPENDIX A

STATE OF WASHINGTON

VOTERS' PAMPHLET

GENERAL ELECTION, NOVEMBER 6, 2007



EDITION 11

Published by the Office of the Secretary of State
King County Elections
City of Seattle Ethics and Elections Commission

INITIATIVE MEASURE 960

Proposed by Initiative Petition

Official Ballot Title:

Initiative Measure No. 960 concerns tax and fee increases imposed by state government.

This measure would require two-thirds legislative approval or voter approval for tax increases, legislative approval of fee increases, certain published information on tax-increasing bills, and advisory votes on taxes enacted without voter approval.

Should this measure be enacted into law?

Yes [ ] No [ ]

Note: The Official Ballot Title was written by the Attorney General as required by law. The Explanatory Statement was written by the Attorney General as required by law and revised by the court. The Fiscal Impact Statement was written by the Office of Financial Management. For more in-depth fiscal analysis, visit www.ofm.wa.gov/initiatives . The complete text of Initiative Measure 960 begins on page 24.

Fiscal Impact Statement

Summary of Fiscal Impact

Initiative 960 would result in added costs to prepare ten-year cost projections for proposed state tax and fee increases, to notify legislators and the public about proposed revenue legislation, and to conduct advisory votes on tax increases approved by the Legislature. Costs are estimated to be up to $1.8 million a year, including $1.2 million for local election expenses. Local government pays election costs in even-numbered years. The state pays a pro-rated share in odd-numbered years. Actual election costs for any particular year will depend on the number of tax measures referred to an advisory vote.

Assumptions Supporting Fiscal Impact Statement

The Office of Financial Management (OFM) will need up to $205,000 in the first year, and $154,000 in subsequent years for computer system modifications and staff dedicated to new responsibilities, including:

- Determining which proposed legislation and fee increases require a ten-year cost projection.
- Conducting analysis of costs to taxpayers from tax and fee increases and/or obtaining such analysis from other state agencies with the appropriate expertise.
- Updating cost projections for legislative amendments to the original proposal.
- Reporting the results of the ten-year cost analyses to legislators, the media, and citizens.
- Notifying legislators, the media, and citizens when bills that raise taxes or fees are scheduled for a legislative committee hearing, pass a legislative committee, or pass one house of the Legislature.
- Maintaining a web site with cost and legislative contact information for each proposed tax or fee increase.

The Office of Financial Management will work with state agencies that collect revenue from tax or fee increases to obtain data on ten-year costs, which is expected to require up to $280,000 per year for staff in the Department of Revenue and an indeterminate amount in other agencies. OFM will review agency projections prior to publication. State agencies will also have to identify all proposed fee increases that would be subject to legislative approval under Initiative 960, but the additional cost to do this cannot be determined.

It is assumed that the required ten-year cost projection will include an estimate of additional tax or fee revenue generated and state agency administrative expenses. Depending on the proposal, the projection may also include the additional amount of the tax or fee that is estimated to be paid by the average taxpayer.

INITIATIVE MEASURE 960

Fiscal Impact Statement *(continued)*

Although the exact number of advisory votes resulting from tax increases passed during any future legislative session cannot be predicted, state and local advisory election costs are assumed to be up to $1.3 million, based on the assumptions below.

- Local and State Government: In printing official ballots, county auditors must provide a separate list with descriptions of any tax measures requiring an advisory vote of the people. Additional costs would be incurred if the number of measures increase the number of pages required for the ballot. One additional page, which could include several tax measures, would cost 37 cents (materials, production, and mailing). It is unknown how many counties would have to add pages to their ballots. If all counties add one page, the cost would be $1.21 million for approximately 3.3 million ballots. Local government would pay this cost in even-numbered years.

  The state reimburses counties for a pro-rated share of election costs in odd-numbered years when there are statewide measures on the ballot. Additional statewide advisory measures would result in more state costs.

  Election costs would occur each year in which tax measures were referred for an advisory vote, but would vary based on the actual number of measures.

- Secretary of State: The Secretary of State will assign a serial number to each ballot measure, file the measure, and certify the measure for county auditors. It is estimated that the description, cost projection and legislator contact information for each ballot measure would require approximately four pages in the statewide voters' pamphlet, at a cost of $94,000 ($23,500 per page) for inclusion in 3.3 million pamphlets.

  Initiative 960 requires a minimum of two pages in the voters' pamphlet for each tax source measure subject to an advisory vote. The need for an average four pages per measure is based on the following assumptions of space requirements: one-quarter page for the description of the measure; between one-half and one-and-one-half pages for the ten-year cost projection; and three pages for the contact information and voting record for all legislators.

- Attorney General: The Office of the Attorney General must identify tax legislation requiring an advisory vote and write a brief description of each measure. This cost is estimated at $1,250 per ballot measure.

Explanatory Statement

The law as it presently exists:

An existing law states that the legislature may only take an action that raises state revenue if two-thirds of the members of each house of the legislature vote to do so. The same statute also states that if the action to increase revenue will result in expenditures that exceed the state expenditure limit, then the action to raise revenue will not take effect unless approved by a vote of the people. With limited exceptions, the state expenditure limit is the maximum amount that may be spent from the state general fund and related accounts in each fiscal year and is calculated using a formula based partly on average growth in personal income. The state expenditure limit is increased when the cost of a state program and related revenues are transferred to the general fund or a related account from another fund or account.

State law also authorizes some state agencies to charge various fees. Fees are different from taxes in that fees generally provide money to pay for specific services that the agency provides or to fulfill a particular regulatory purpose, while taxes ordinarily are designed to raise revenue for governmental services more generally. Where agencies are authorized to set fees, state law limits the size of any increase in fees during any fiscal year. Agencies are generally prohibited from raising any fee in any year by more than the rate of average growth in state personal income over the prior ten fiscal years. Greater increases require legislative approval.

State law establishes that the office of financial management is responsible for providing a fiscal note, which is a statement of fiscal impact, for all bills and resolutions which increase or decrease or tend to increase or decrease state government revenues or expenditures. A fiscal note indicates by fiscal year the impact for the remainder of the biennium in which the bill or resolution

Explanatory Statement *(continued)*

The law as it presently exists: *(continued)*

would take effect as well as the cumulative impact for the next four fiscal years. A completed fiscal note is filed immediately with designated legislative committees. Whenever possible, a fiscal note is provided prior to or at the time the bill or resolution to which it relates is first heard by the applicable legislative committee. A fiscal note remains attached to the bill or resolution throughout the legislative process whenever possible.

The state constitution requires that each house of the legislature maintain a journal of its proceedings. The state constitution also requires that the names of the members of the legislature voting for and against the final passage of a bill be entered in the journal.

The state constitution authorizes the legislature to refer legislative bills to the people for their approval or rejection at a general or special election. State law neither specifically authorizes nor specifically prohibits the use of non-binding advisory votes on legislative bills.

The effect of the proposed measure, if it becomes law:

The measure applies to the existing requirement that any action taken by the legislature that "raises taxes" must be approved by a two-thirds vote. Specifically, the measure would clarify that the term "raises taxes" includes any legislative action that increases state tax revenue deposited in any fund, budget, or account, but does not include revenue neutral tax shifts. The measure would recognize that the legislature may, if it chooses, submit a tax increase to the voters for their approval or rejection in a referendum.

With limited exceptions, the measure would also require legislative approval for all new fees and fee increases. Agencies would no longer be authorized to increase fees by administrative action.

For any bill introduced in the legislature raising taxes or fees, the measure would require the office of financial management to promptly determine and provide to the public and members of the legislature a ten-year projection of its cost to taxpayers, including a yearly projection. The cost projection would be required for each revenue source in any such bill. The measure would require that the office of financial management report the cost projection analysis in a press release to be posted on its website, including the names and contact information for the sponsors and co-sponsors of any such bill. When a legislative committee schedules a public hearing for a bill raising taxes or fees, the measure would require the office of financial management to promptly report the most recent cost projection analysis and provide notice of the hearing to legislators, the media, and the public. When a bill raising taxes or fees is approved by a legislative committee or a majority of members of either house of the legislature, the measure would require the office of financial management to expeditiously update the cost projection and report the updated analysis to the legislature, the media and the public. The office of financial management would be required to prioritize the preparation of cost projection analyses and reporting and dissemination of cost projection information for bills raising taxes or fees. Such projections would take priority over producing fiscal notes. The measure would require that whenever possible, the cost projection analysis be provided, along with the fiscal notes, prior to or at the time the bill or resolution is first heard by the applicable legislative committee. As with fiscal notes, the cost projection analysis for bills increasing taxes or fees would be attached to the bill or resolution throughout the legislative process insofar as possible.

The measure would eliminate the current allowance for an increase in the state expenditure limit when the cost of a state program and related revenue are shifted to the general fund or a related fund from another fund or account if the revenue previously had been shifted from the general fund or a related fund.

The measure would require an advisory vote of the people to be placed on the next general election ballot if legislative action raising taxes is not subject to a referendum vote. If such legislative action involves more than one revenue source, the measure requires that each tax increase would be subject to a separate advisory vote of the people. The measure would not require an advisory vote of the people if legislative action raising taxes is otherwise subject to a vote of the people.

In order to implement the advisory vote, the measure would require the attorney general to determine legislative action that is subject to an advisory vote, send written notice to the secretary of state, and formulate a short description of each advisory vote measure. The measure would require county auditors to print advisory vote measures and their short description on the official ballots under a separate heading on the ballot entitled "Advisory Vote of the People." The measure would also require the general election voters' pamphlet to contain certain information about each advisory vote appearing on the ballot, including the short description written by the attorney general, the most recent ten-year cost projection analysis, each legislator's vote on final passage of the tax increase, and contact information for each legislator.

Statement For Initiative Measure 960

I-960 CLOSES LOOPHOLES THE LEGISLATURE PUT IN TAXPAYER PROTECTION INITIATIVE 601, VOTER-APPROVED IN 1993

I-601 put reasonable limits on state government's fiscal policies. But over the years, Olympia has put loophole after loophole into it to circumvent the law. I-960 closes those loopholes.

In 2005, the Court ruled the Legislature broke the law by shifting funds to spend the same money twice. Justice Owens called it "a shell game." Incredibly, Olympia defended itself saying I-601 DIDN'T SPECIFICALLY PROHIBIT THEM FROM SPENDING THE SAME MONEY TWICE! I-960 says shifted money isn't new revenue and can only be spent once.

For 13 years, the law has required two-thirds legislative approval for tax increases. The Legislature re-enacted this two-thirds requirement in 1998 and 2005. But to circumvent the law, Olympia takes tax increases off-budget. I-960 says Olympia must follow the law whether the tax increase is off-budget or on-budget.

No one is above the law, not even the Legislature.

TO CIRCUMVENT OUR CONSTITUTION AND REPEAL OUR RIGHTS, OLYMPIA DECLARES A BILL AN "EMERGENCY"

I-960 alerts voters anytime Olympia imposes an "emergency" tax increase with two-pages in the general election voters pamphlet listing the costs, how legislators voted, and provides voter feedback with an advisory vote. We can't stop politicians from repealing our constitutionally-guaranteed rights, but we're entitled to know which politicians are doing it.

I-960 helps Olympia follow the law and respect our Constitution.

I-960 REQUIRES THE GOVERNMENT TO PUBLICLY DISCLOSE COSTS AND LEGISLATORS' SPONSORSHIP AND VOTING RECORDS ON ...

... any tax increase bill. I-960 guarantees email updates get sent to the press and the people anytime a tax increase bill "moves." The people have the right to know what Olympia is doing.

WASHINGTON'S THE 9TH HIGHEST TAXED STATE IN THE NATION – I-960 KEEPS US FROM HITTING #1

I-960 reminds politicians that taxpayers don't have bottomless wallets. Vote Yes.

For more information, call (425) 493-8707 or visit www.TheTaxpayerProtectionInitiative.com .

Rebuttal of Statement Against

Opponents' threats, lies, and scare tactics are hilarious (terrorist attacks? recession? flu?).

Washington has 13 years of positive experience with I-601 (Colorado's totally different).

I-960's protections affect tax increases, not fund transfers.

Government collects over $50 BILLION EVERY YEAR. Even without tax hikes, revenue grows. If prioritized, that's more than enough.

Send politicians a message: stop declaring "emergencies" – they short-circuit our rights. Stop breaking the law.

Approve I-960 because politicians can't control themselves. Vote Yes.

Voters' Pamphlet Argument Prepared by:
ERMA TURNER, beauty shop owner, gathered 3,455 signatures, Cle Elum; STEVEN BENCZE, retired warehouseman, fisherman/hunter, gathered 2,461 signatures, Othello; ERIC PHILLIPS, hiker, label company owner, gathered 2,348 signatures, Everett; KAREN CURRY, housewife, husband Lee (plumber), gathered 2,172 signatures, Yakima; ANDRE GARIN, retired postal worker, bowler, gathered 1,989 signatures, Vancouver; MIKE DUNMIRE, husband, community leader, retired businessman, initiative volunteer, Woodinville.

Statement Against Initiative Measure 960

All of us want greater accountability and openness from government. Initiative 960 pretends to do that, but will only make things worse.

I-960 WILL LEAD TO ENDLESS, EXPENSIVE ELECTIONS.

I-960 would require a public vote on countless budget items, no matter how small. The result? Less efficient government, long and confusing ballots, and millions of dollars wasted on endless elections.

I-960 WILL MAKE GOVERNMENT LESS EFFICIENT.

Routine fund transfers to address basic needs, such as road and bridge repairs, children's health care, or prescription drug assistance for seniors would require a two-thirds legislative vote *and* a public vote. This could cripple state government.

When a similar measure was enacted in Colorado, nonpartisan analysis revealed education funding dropped from 35th in the nation to 49th, child immunization rates fell to dead last among the 50 states, and prenatal care fell from 23rd to 48th. This must not happen in Washington State.

I-960 WILL NOT CUT TAXES, BUT IT WILL WASTE YOUR MONEY.

More elections and longer ballots are expensive to administer and process. Sorting out the many legal issues created by I-960's confusing and poorly written language will tie up the courts, costing taxpayers time and money.

I-960 WILL SLOW GOVERNMENT'S RESPONSE, EVEN IN A CRISIS.

The initiative would leave us vulnerable in times of crisis. I-960 says the legislature can suspend supermajority legislative and public votes only during a natural disaster. Authorities would be handcuffed from responding quickly during an economic recession, pandemic flu, or even terrorist attacks.

I-960 is too risky and too expensive. Join police, firefighters, teachers, nurses, Children's Alliance, Washington Association of Churches, Washington Conservation Voters, Washington State Labor Council, business and citizens across Washington in voting *No on 960.*

For more information, call (206) 501-4342 or visit www.no960.com .

Rebuttal of Statement For

I-960 mandates wasteful, costly elections and would create mass confusion—not transparency and accountability. Dozens of complicated votes would only get 13-word descriptions. (Sec. 8)

I-960 is so complex even sponsor Tim Eyman admitted: "You asked for a short description of 960, I just can't give it to you." (Crosscut 8/13/07)

I-960 cannot be suspended due to a terrorist attack or economic crisis – only for a "natural disaster." (Sec. 5.3(a))

Vote NO on I-960.

Voters' Pamphlet Argument Prepared by:
RANDY REVELLE, Senior Vice President, Washington State Hospital Association; DOUG SHADEL, Director, AARP of Washington; JUDY HUNTINGTON, RN, Executive Director, Washington State Nurses Association; MIKE RAGAN, Kennewick High School teacher, WEA Vice President; MICHELLE MOULTON, M+M Painting, small business owner, Sammamish; KELLY FOX, President, Washington State Council of Firefighters.

APPENDIX B

THE WASHINGTON STATE CONSTITUTION
A Reference Guide

Robert F. Utter and
Hugh D. Spitzer

REFERENCE GUIDES TO THE STATE CONSTITUTIONS OF THE UNITED STATES, NUMBER 37
G. Alan Tarr, *Series Editor*

GREENWOOD PRESS
Westport, Connecticut • London

by both houses without further amendment. Opponents of the legislation argued that the restriction on amendments violated Article II, Section 20. The Washington Supreme Court refused to read Section 20 as a proscription for the entire course of a bill's passage. The provision ensured that the nonoriginating body of the Legislature would have the opportunity to amend the bill. The free conference committee did not interfere with either body's ability to amend the bill when first present. In addition, the court recognized that compromise was vital to the legislative process and therefore an interpretation that hindered compromise seemed illogical.

SECTION 21

> **Yeas and nays.** The yeas and nays of the members of either house shall be entered on the journal, on the demand of one-sixth of the members present.

Article II, Section 21, borrowed from Wisconsin, was not controversial when it passed in 1889 and it has not engendered reported decisions in the following years.

SECTION 22

> **Passage of bills.** No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

Article II, Section 22, taken from California and Pennsylvania, enumerates the procedure for enacting a bill. In the constitutional convention, motions were made to prevent bills from being introduced in the last 10 days of the session and to allow a majority of the members present to pass a bill. Both motions were defeated (Rosenow, 1962, 535–36).

The Legislature may depart from Section 22 if there is an emergency as set forth in Article II, Section 42.

SECTION 23

> **Compensation of members.** Each member of the legislature shall receive for his services five dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature, on the most usual route.

An independent commission created under Article XXVIII now sets compensation of legislators. Salaries and expense provisions are detailed in Chap. 43.03 RCW.

SECTION 24

> **Lotteries and divorce.** The legislature shall never grant any divorce. Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature or, notwithstanding any other provision of this Constitution, by referendum or initiative approved by a sixty percent affirmative vote of the electors voting thereon.

When originally enacted, Section 24 prohibited lotteries in the state. In 1972, Amendment 56 allowed lotteries approved by 60 percent of the legislators or by 60 percent of the voters.

Any activity that is considered a lottery must be approved in accordance with Section 24, and pre-amendment case law remains the primary source for defining what activities constitute "lotteries." The Washington State Supreme Court has interpreted the term "lottery" broadly (State ex rel. Evans v. Brotherhood of Friends, 1952). In a grocery store "bonus bingo" case, the court ruled that the three characteristics of a lottery are prize, consideration, and chance (Schillberg v. Safeway Stores, Inc., 1969). Activities such as "Guest-Guesser" football forecasting (Seattle Times Co. v. Tielsch, 1972), and mail-order house sweepstakes (State v. Reader's Digest Association, Inc., 1972) have also been considered lotteries.

Chapter 9.46 RCW codifies Washington's gambling laws enacted as the Gambling Act of 1973. The state lottery was approved in 1982 and is codified at Chapter 67.70 RCW.

SECTION 25

> **Extra compensation prohibited.** The legislature shall never grant any extra compensation to any public officer, agent, employee, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office. Nothing in this section shall be deemed to prevent increases in pensions after such pensions shall have been granted.

Article II, Section 25 was copied from Wisconsin, and restricts lawmakers from granting or receiving extra compensation after services have been rendered. The last sentence, added by Amendment 35 in 1958, permits the Legislature to increase pensions once granted. Article XXX provides an exception by allowing

APPENDIX C

WASHINGTON STATE
CONSTITUTIONAL CONVENTION
1889

CONTEMPORARY NEWSPAPER ARTICLES

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THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION, 1889, WITH ANALYTICAL INDEX

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Buffalo, New York
1999

AT OLYMPIA.

Proceedings of the Constitutional Convention.

Consideration of the Legislative Article Takes up all the Forenoon.

A Clause Excluding Aliens from Holding Land is Determined Upon.

OLYMPIA, Aug. 9.—[Special.]—The convention met at 9 o'clock.

Prayer was offered by Rev. Mr. Buck, of the Episcopal church of Olympia.

President Hoyt designated Bowen, Hickt and Dallam as the committee on state seal.

Crowley submitted the report of the apportionment committee.

Blalock presented the report of the state medicine committee.

Manly presented the report on mines and mining, signed by himself, Jamison, Morgan and Weisenburger.

There were two minority reports, one signed by McDonald, and the other by Newton and Gray.

On motion of Prosser, the convention went into the committee of the whole, for further consideration of the legislative article, with Blalock in the chair.

Section 31, requiring general laws in place of the special legislation prohibited by section 30, was approved.

Section 32, prohibiting the leasing of convict labor was approved.

Section 33 is on the subject of bribes and prohibiting legislators from voting on measures in which they are themselves interested. The section comes from the Pennsylvania constitution and is the work of Jeremiah Black. Schooley and Cosgrove wanted to strike it out but it was finally adopted after being amended by Turner so as to make no reference to bribery.

Sec. 34. No law, except appropriation bills shall take effect until ninety days after the session was approved.

Sec. 35. No bill shall become a law until signed by the presiding officers of both houses and is approved.

The following substitute for section 36 was offered by Jamieson and approved: "The ownership of lands by aliens is prohibited, except when acquired by inheritance, or under mortgage, or in good faith in the ordinary course of justice in the collection of debts. Conveyances of lands hereafter made to any alien, directly or in trust for such alien, shall be void. Provided that provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal or fire clay, and necessary land for mill and other necessary machinery to be used in development thereof."

E. H. Sullivan moved to strike out the substitute, because it was going back 100 years.

P. C. Sullivan, Suksdorf and Stiles spoke in favor of striking out, and Griffitts and Moore opposed it.

Buchannan claimed that adoption of the provision was going back to Chinese exclusiveness.

Minor said it was true that the provision was old, but under it England had become the most wealthy and powerful country in the world.

Warner considered it a great evil to allow foreigners to acquire large holdings of property.

Weisenberger said the greatest protection to the state would be ownership of its property by its own citizens.

E. H. Sullivan closed the debate, and the motion to strike out was lost.

The committee arose at 12 and took a recess until 2.

AFTERNOON SESSION.

Consideration of the legislative article was continued this afternoon, and section 37 was approved. This classes corporations the majority of the stock of which is held by aliens among alien corporations.

Sections 38 and 39 were stricken out. These were as mechanic's

Seattle Times, August 9, 1889, p. 1, col. 4

liens and statistics.

Section 40 was approved. This requires laws for the protection of persons in mines and wells.

Amid shouts of laughter an additional section forever excluding the members of the convention from holding an office created by the constitution was voted down.

THE LEGISLATIVE ARTICLE.

It Will Not Be Cut up Much by the Convention.

OLYMPIA, Aug. 8.—The consideration of the legislative article took up all yesterday afternoon. Sections 1, 2, 3, 4 and 5 were passed without amendment.

Stiles' amendment to the sixth section, proposing that senators shall be elected for four years after the first election, was accepted by Moore and carried. The section was then passed.

T. M. Reed moved to strike out the provision in the seventh, that at the first election every qualified elector is eligible to election.

The amendment was carried by a vote of 32 to 13.

Section 8 was adopted as read.

A motion to strike out section 9 was lost and the section passed.

Godman wanted the provision in section 10 giving the lieutenant governor the deciding vote in case of a tie stricken out, but it did not prevail.

Griffitts desired stricken out the provisions for secret sessions in section 11. Moore thought these provisions necessary and so did the convention.

Section 12 was adopted with slight verbal amendments. Sections 13, 14 and 15 were passed.

Section 16 was amended so that members of the legislature will not be privileged from arrest for fifteen days after the termination of each session.

Sections 17, 18, 19, 20 and 21 were passed.

Stiles offered an amendment to section 22, providing that no bill shall become a law unless presented ten days before the adjournment of the legislature. Lost.

Stiles raised the point of order that there was not a quorum present. The chair said that it was not necessary in a committee of the whole.

Turner moved to strike out the provision that a majority vote of the members elected be necessary to pass a bill.

The motion was lost and the section passed.

Sharpstein offered a substitute for section 23, providing that members be paid $250 and mileage at the rate of ten cents a mile coming and going for each regular session, and five dollars a day and mileage for each special or called session.

A debate ensued and the substitute was lost.

Powers moved to increase the per diem to $8. Sharpstein moved to amend to $4.

Both amendments were lost.

Powers moved that the legislature be authorized to increase or decrease the per diem. Lost.

Gowey offered a substitute allowing the first legislature to fix the salary. Lost.

A motion to strike out section 24 was lost.

Griffitts' motion to strike out section 25 caused considerable discussion. The motion was carried by a vote of 24 to 23.

Sections 26 and 27 were passed.

Section 28 was struck out after a long discussion, the vote being, ayes 30, noes 25.

A motion to strike out section 29 was lost and the section agreed to.

Section 30 which prohibited certain special legislation, was taken up clause by clause.

The words on granting divorces was added to the first clause.

Clauses 2, 3 and 4 passed as read.

Clause 5 was amended to prevent the changing of county lines.

Clauses 6, 7 and 8 were passed.

A motion to strike out clause 9 was lost, and the clause passed.

Clauses 10, 11, 12 and 13 were passed.

Clauses 14, 15 and 16 were stricken out.

Clauses 17, 18 and 19 were agreed to.

Clause 20 was stricken out after some discussion.

Moore moved that the committee rise, but the motion was lost.

Clauses 21 and 22 were passed.

Clause 23 occasioned much discussion, and was amended to prevent the locating or changing of county seats.

Clause 24 was passed.

The committee then rose, reported progress and asked leave to sit again, which was granted.

A congratulatory telegram was received from the Idaho convention.

Convention then adjourned.

Seattle Times, August 9, 1889, p. 1, col. 4